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SEA in Serbia – 16 years of implementation

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1. Short introduction on the SEA legislation framework in Serbia

The development of the system of strategic environmental assessment (SEA) in Serbia inevitably arose as a reflection of the recent geopolitical and environmental trends. This means that inclusion of a mandatory SEA in Serbian national legislation was embraced as an important step from the two main reasons; it is on the one side a significant tool for environmental evaluation of plans and programmes. But it also, at the same time, represents an important prerequisite for harmonisation with *acquis communautaire*, which is one of the necessary preconditions for all countries aspiring to join the EU.

The main pillar of the SEA system in Serbia is represented by the Law on Strategic Environmental Assessment, which almost fully complies with the EU Directive 2001/42/EC on the Assessment of Certain Plans and Programmes on the Environment (SEA Directive). The Law has been adopted in December 2004, as a part of a quartette of significant environmental legislation that also included Law on environmental protection, Law on IPPC (integrated pollution prevention and control) and the Law on Environmental Impact Assessment (EIA).

The Law on SEA was developed in compliance with the SEA Directive, but it is important to mention a few specificities. One of them refers to the lack of adaptation period. The SEA Directive (from 2001) came into effect three years (21 July 2004) after adoption and applies to plans and programmes whose preparation started after that date. The Law on SEA in Serbia entered in force right after adoption (on 29 December 2004, i.e. eight days after its publication in the Official Gazette of the RS) and stipulated that SEA must be applied for plans that are already in the designing process.

The lack of adaptation period, associated with the fact that making of manuals or expert guidelines is not explicitly specified by Law, had a big chances to lead to a lot of misunderstandings and problems in implementation of this Law. The first guidance on implementation of the Law on SEA was published only in 2007 (by the Ministry of Science and Environment Protection of the Republic of Serbia, based on Scottish guide to the SEA Directive from 2005). Trainings and seminars started to be organized from 2005 (by international and national NGOs, professional bodies, Ministry).

The Law is not further strengthened by appropriate bylaws, particularly related to public consultation process. It creates a legal loophole in cases when public consultations are not envisaged for adoption of certain plans and programs (forest management, waste and water management, etc).

Obligation to make an SEA for plans which are still in the designing process can arise two types of problems in practice (Stojanović, Spasić, 2006): how to fit the SEA in dynamics of planing design process already foreseen by adopted programme, and what to do with proposed plan which already passed all the phases, including public hearing, but is formally not yet adopted.

Up to the Law, SEA shall be carried out for all plans and programmes (PPs):

1) in the fields of spatial and town planning or land-use planning, agriculture, forestry, fishery, hunting, energy, industry, transport, waste management, water management, telecommunications, tourism, preservation of natural habitats and wildlife, that set the frameworks for granting the approval for future development projects defined by the EIA related legislations;

2) which determine the use of smaller areas at the local level, or in cases of minor modifications to PPs that do not require the formal adoption procedure, as well as other PPs, if the competent planning authority determines that there is the possibility of significant impact on the environment;

3) with exception of PPs for defence of the country, mitigation and elimination of the consequences of natural disasters; financial and budget plans.

2. Problems in the first years of implementation

During the first years of implementation of the Law on SEA (until 2010 when first amendments have been adopted) some specific problems arose.

In the screening phase, there is a potential risk of too bureaucratic interpretation which can lead to preparing an SEA for every PP. Practice showed that sometimes authorities decide that SEA should be carried out for some small scale plans, but not for a larger-scale plans with much bigger possibility for the negative environmental impacts (e.g. changes of the Master plan of Belgrade 2021). On the other side, when having several plans for the same territory (e.g. regional plan for the whole municipality, master plan and several regulation plans in the same municipality), there is a possibility for duplicating the work or having conflicts between assessments on different hierarchical levels. One of the reasons for this lay in the propositions of the art. 7 of the Law, referring to the hierarchical framework, which stipulates that "Strategic assessments made for plans and programs at different hierarchical levels must be mutually harmonized and harmonized with environmental impact assessments of projects, as well as environmental protection plans and programs."

The biggest challenges in the scoping phase are the analyses of alternative solutions presented in the PP (with decision making process and explaination of choices) and identification of impacts that need to be assessed. Defining proper indicators and criteria for evaluation, is also a challenge hard to fulfill with no guidelines and lack of practice.

The short practice in applying Law on SEA showed that there have been some critical issues which needed to be considered with special attention:

a) due to insufficient understanding, many experts prepare SEAs like extended EIAs,
b) SEA reports are sometimes too detailed, even a few times longer than the plan itself,
c) Understanding the SEA as a one-term assessment,
d) SEA process often done in the final phase of a PP, which limits the SEA role,
e) The process of adoption of SEA reports can be very long, which at the same time slows down the process of plan adoptation, issuing of building permits and investing (for one and half years after Law on SEA came into effect, less than 10 SEA Reports for different levels of plans were adopted),

f) public participation is foreseen only in the final phase of SEA process and only as a public insight and debate,
g) Due to insufficient experience and training of the competent authorities (especially in small municipalities), incomplete and inadequate SEA reports are sometimes adopted.
h) need for manuals, guidelines and additional regulations for SEA experts, authorities and interested public, and training courses,
i) Use of foreign literature and experiences of developed countries has to be adjusted to local conditions.

3. Problems in the "developing" phase

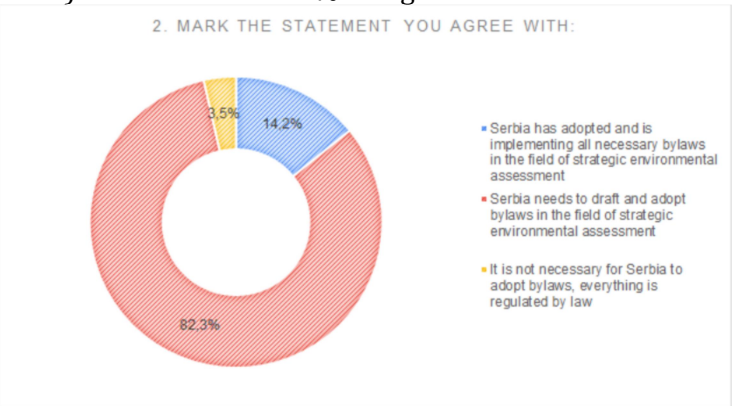
Start of the second or "development" phase is related to the adoption of Amendments to the Law on SEA in 2010. Those amendments were minor, but included some important changes:

a) In the Art. 2 the Law stipulates that the Minister determines the list of PPs for which the SEA is obligatory, as well as the list of PPs for which the SEA may be requested. This would provide significant support for decision makers in the screening phase. However, today, 11 years after the adoption those lists have still not been determined;
b) In the Art. 7, par. 2 the Law stipulates that SEAs must comply with higher hierarchical level. This had solved a problem from 2004.
c) In the Art. 8 the Law stipulates that public participation must be organized for every SEA. This is very important for PPs that do not require implementing the procedure of public insight, public debate or commenting in the process of their adoption.

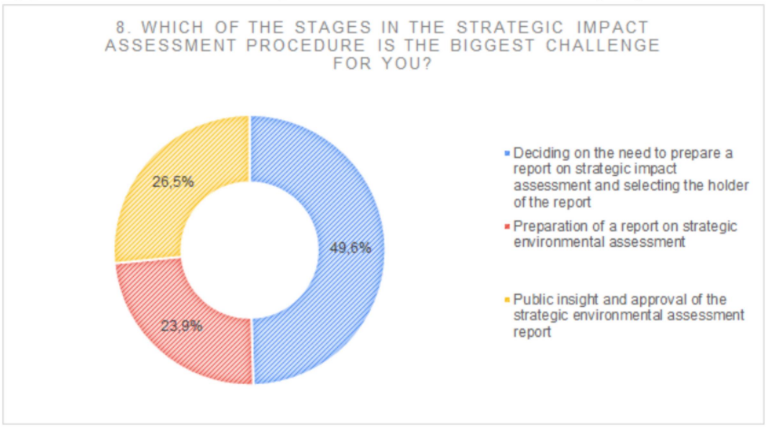
It is also important to mention the relation of the Law on SEA with the Law on Planning and Construction (from 2009, amended several times, the last amendments in 2020), which is one of the rare laws that prescribe obligation of conducting the SEA. The Law on Planning and Construction recognized SEA as a part of Spatial Plans for Specific Purpose Areas, and mentions that SEA Report must be a part of documentation of national, regional and local spatial plan; but within urban planning - SEA is not mentioned at all. This actually just confirms the overall approach in Serbian legislation, i.e. although according to the Law on SEA an SEA should be done for many PPs, the sectoral legislation has remained silent regarding mentioning this obligation.
The practice showed that SEA has been conducted mainly for spatial and urban plans. The reason lies partly in the fact that it is not even mentioned in laws on agriculture, forestry, tourism, energetics, waste management etc. that were all adopted after 2004.
Many problems from the first phase continue, especially: inadequate decision making, lack of experience of decision-makers and experts, low quality or insufficient SEA process and reports, poor public participation only in the final phase, etc.

According to the results from a questionnaire conducted among of 113 representatives of local communities in Serbia, from September 2020 (SKGO, RERI, 2020):

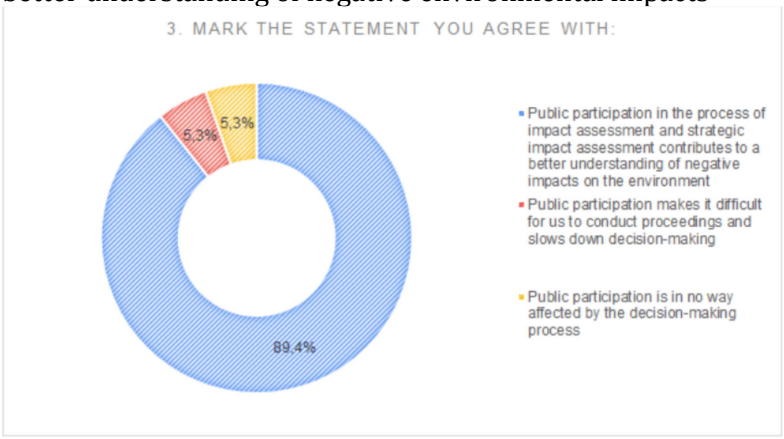
1) more than 80% recognized the need for new amendments/bylaws



2) Regarding the stages in the SEA procedure, 50% find the deciding on the need to prepare a SEA report and selection of the report' holder the most challenging, while the public insight and approval of the SEA report are the most challenging for 26,5%.



3) Majority (90%) think that Public participation in the process of EIA/SEA contributes to a better understanding of negative environmental impacts



4. **Most important challenges**

Although the Law on SEA mainly complies with the SEA Directive, there are still several issues that need to be changed for full compliance of Serbian national legislation with the SEA Directive. This includes especially (NPAA, 2018): avoidance of duplicating the SEA procedure on different hierarchical levels, content of the SEA report, detailed arrangements for informing bodies and organizations and public, and consultations with them, trans-border consultations, informing on decision, monitoring and informing the European Commission on the measures done regarding the quality of the reports.

It has been noticed that even in 2021 incomplete SEA reports have been adopted on the local level. However, due to the lack of experience and training of the competent authorities, especially in the smaller communities, incomplete and inadequate SEA reports sometimes are adopted.

Here are the most important challenges with an aim to improve quality of SEA process include seriously addressing:
- Low quality of SEA Reports (especially definition of alternatives, possible impacts, indicators. Even in 2021 there was at least 1 SEA Report adopted without evaluation of alternatives!)
- Low quality control
- Lack of interest and capacities
- Insufficient knowledge of all important actors (there is still a need for education of SEA practitioners, authorities and public at large)
- Adoption of New amendments which will enable full transposition of SEA Directive (planned for 2017 but postponed, public consultations in several cities held in April 2019), but they are still not adopted

Due to all this problems, SEA in Serbia still remains a formal process with limited public participation and modest effect on environment protection.

Literature

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